

MEMORANDUM OF UNDERSTANDING

BETWEEN

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

AND

**THE UNITED STATES DEPARTMENT OF THE INTERIOR (DOI),
BUREAU OF LAND MANAGEMENT (BLM),
BY AND THROUGH THE NEVADA
STATE DIRECTOR**

REGARDING

**NASA APPLICATION FOR LAND WITHDRAWAL AND RESERVATION,
RAILROAD VALLEY, NYE COUNTY, NEVADA**

I. Introduction

This Memorandum of Understanding (MOU) establishes a cooperative working relationship between the National Aeronautics and Space Administration (NASA) and the Bureau of Land Management (BLM), Department of the Interior (DOI). NASA has applied to the Secretary of the Interior (Secretary) for a withdrawal and reservation of public land in Railroad Valley in Nevada for satellite calibration purposes (NASA Land Withdrawal Application) and is the lead agency for preparation of studies and analyses in support of that application, as specified in section 204 of the Federal Land Policy Management Act of 1976 (FLPMA) (43 U.S.C. §§ 1711-1712) and 43 CFR Part 2300. The BLM, in turn, is responsible for review of application materials as to their adequacy to support Secretarial decision making under FLPMA section 204. The BLM is also responsible for assembling the case file, including Findings and Recommendations for Secretarial consideration in such decision making. This MOU describes responsibilities and procedures as agreed upon by NASA and BLM ("the Parties").

The Parties' relationship established through this MOU shall be governed by all applicable statutes, regulations, and policies, including the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR Parts 1500-1508), the BLM's withdrawal regulations (43 CFR Part 2300), the NASA Procedures for Implementing the National Environmental Policy Act (NASA NEPA Regulations (14 CFR Subpart 1216.3)), and the DOI's NEPA Regulations (43 CFR Part 46).

This MOU is intended to provide a framework for interagency communication and coordination, facilitate the division of roles and responsibilities, and establish a mutually agreed upon schedule for the processing of NASA's land withdrawal application, including for the sharing of special expertise and information and preparation of studies, reports, and environmental documents as may be required or associated with NASA's application for withdrawal and reservation of public lands and BLM management of those public lands, including the Federal sub-surface estate. Although the Secretary may make a decision regarding NASA's land withdrawal application any time following completion of procedural and substantive requirements for such decision making, the agencies intend that the work and schedule under this agreement be completed and the Secretary's decision making under FLPMA section 204 fully adjudicated by April 29, 2023, to avoid a lapse in the two-year segregation of lands that NASA has applied to be withdrawn and reserved.

II. Purpose

The purposes of this MOU are:

- A. To recognize that NASA is the lead agency with responsibility for the completion of any studies, analyses, reports, or other information as may be required pursuant to 43 CFR § 2310.3-2 to support its application to the Secretary for withdrawal and reservation of the public lands requested, including, but not limited to, economic and mineral resources analyses. In accordance with 43 CFR § 2310.3-2(b)(3), the BLM is designated as a Cooperating Agency in the NASA land withdrawal application NEPA process.

- B. To provide a framework and schedule for cooperation and coordination between the BLM and NASA that will ensure:
1. Successful completion of NEPA compliance requirements in a timely, efficient, and thorough manner, including successful submittal of required NEPA documentation, including information, studies, analyses, and reports as may be required;
 2. Incorporation of NEPA and other required documentation into case file materials along with BLM findings and recommendations regarding NASA's withdrawal application to the Secretary; and
 3. Consideration by the Secretary of such case file and recommendations in a timely, efficient, and thorough manner.
- C. To recognize and provide guidance for the development of a mutually respectful and effective working relationship between the Parties as it relates to the tasks at hand.
- D. To describe the respective responsibilities, jurisdictional authority, and expertise of each of the parties in the NEPA and overall land withdrawal processes.

III. Authorities for the MOU

- A. The authorities of Parties to enter into this MOU include, but are not limited to:
1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
 2. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)
 3. National Aeronautics and Space Act (51 U.S.C. 20113(e))
- B. Regulations implementing the above authorities, as applicable include, but are not limited to:
1. Council on Environmental Quality regulations (40 CFR Part 1500 et seq.)
 2. NASA NEPA regulations (14 CFR Subpart 1216.3)
 3. Department of the Interior NEPA regulations (40 CFR Part 46)
 4. BLM withdrawal regulations (43 CFR Part 2300)

IV. Roles and Responsibilities

A. NASA Responsibilities:

1. To comply with 43 CFR § 2310.3-2, NASA will serve as the lead agency in conducting an environmental impact analysis as required by NEPA to evaluate the significance of the environmental impacts of the proposed land withdrawal and reservation. In accordance with 43 CFR § 2310.3-2(b)(3),

BLM is designated as a Cooperating Agency in the NASA land withdrawal application NEPA process, and in coordination with BLM, NASA may designate other Cooperating Agencies.

2. NASA is responsible for the content of all NEPA documents and for determining the level of documentation required (i.e., preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS)). NASA, as lead agency, has determined that the proposed action is not likely to have significant effects on the quality of the human environment, and preparation of an EA is appropriate. If, however, NASA determines during EA development that the environmental impacts of the proposed action are significant and an EIS is required, NASA, in coordination with BLM, shall prepare a Notice of Intent to Prepare an EIS and proceed to scoping. If NASA determines that preparation of an EIS is required, a new MOU and project schedule will be developed by the Parties.
3. To the maximum extent possible and consistent with NASA's responsibilities as lead agency, NASA will coordinate with the BLM to seek early and consistent involvement, consider the comments, recommendations, data, and/or analyses provided in the NEPA or withdrawal evaluation process, considering those topics for which the BLM is acknowledged to possess jurisdiction by law or special expertise.
4. To the fullest extent practicable, NASA will provide in a timely manner, documents underlying the NEPA analysis relevant to the BLM's responsibilities, including technical reports, data, analyses, comments received, draft environmental reviews, and draft and final versions of the documents.
5. NASA will meet with the BLM at its request.
6. In coordination with the BLM, NASA will develop and establish a schedule (included in Attachment B) with projected milestones for completion of the EA and associated information, studies, analyses, and reports as may otherwise be required.

B. BLM Responsibilities:

1. BLM will provide support throughout the development of NASA's EA and other environmental impact analyses, and, to the extent the analyses support(s) the conclusion, preparation of a Finding of No Significant Impact (FONSI) or Notice of Intent (NOI) to prepare an EIS. The BLM agrees to provide meaningful and early input on NASA's description of the purpose and need for the proposed action, identification of reasonable alternatives for analysis, methodologies and level of detail required in the alternatives analysis and determining appropriate mitigation measures if necessary.

2. BLM will assist NASA throughout the entire NEPA process, including, but not limited to, identifying issues to be addressed in the EA based on discussions with BLM's technical experts, arranging for the collection and/or assembly of necessary resource, environmental, social, economic, and institutional data; consultation on a project schedule (in compliance with the agency time frames established by regulation or policy); development of the alternatives; evaluating alternatives and evaluating the effects of their implementation.
3. BLM will address the information, comments, and provide technical expertise to NASA for those elements of the NEPA analysis and other required studies, surveys, and reports, and the data and analyses supporting them, in which it has jurisdiction by law or special expertise or for which NASA requests BLM's assistance (40 CFR § 1501.8(b)(3)).
4. Within the areas of its jurisdiction or special expertise, BLM shall participate in the activities identified in Attachment A.
5. BLM will meet NASA's schedule, included in Attachment B, and elevate, as soon as practicable, to the senior agency official of the DOI (40 CFR § 1508.1(dd)) any issues relating to purpose and need, alternatives, or other issues that may affect its ability to meet the schedule (40 CFR § 1501.8(b)(6)).
6. In coordination with NASA, and to the extent the proposed action may have an effect on culturally significant and/or archaeological resources, BLM will initiate and conduct consultation with the State Historic Preservation Office and Native American Tribes affected by the application.
7. The BLM will have one representative, and an alternate, appointed to represent its interests and work with NASA.
8. The BLM will meet with NASA at its request.

C. Responsibilities of the Parties:

1. The Parties agree to participate in this NEPA and withdrawal application process in good faith and make all reasonable efforts to resolve disagreements. Where procedural or substantive disagreement may impede effective and timely completion of the withdrawal application process, the Parties agree to use the conflict resolution procedures described below (see Section V.G).
2. The Parties will seek to meet the schedule provided as Attachment B, which includes dates for withdrawal application process milestones and timeframes for reviews and submissions. If the Parties fail to meet the milestones and timeframes in Attachment B, the Parties agree to promptly meet to revise the schedule in a manner that allows for completion of all required deliverables in support of NASA's application and the Secretary's decision

making. If a new schedule cannot be mutually agreed upon, the Parties agree to use the conflict resolution procedures described below (see Section V.G).

3. NASA agrees to reimburse BLM's expenses associated with the withdrawal application process, as set forth in a separate interagency agreement.

V. Other Provisions

- A. *Authorities not altered.* Nothing in this MOU alters, amends, affects, limits, alters, or supersedes the statutory or regulatory authorities and responsibilities of the BLM or NASA. This MOU does not require either the BLM or NASA to take any action that is beyond their respective statutory or regulatory authority.
- B. *Financial obligations.* Nothing in this MOU may be interpreted to require either the BLM or NASA to assume any obligation or expend any sum in excess of authorization and appropriation available to either agency.
- C. *Immunity and defenses retained.* Each agency retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.
- D. *Conflict of interest.* The BLM and NASA agree not to use any person or organization having a financial interest in the outcome of the decision-making process for purposes of environmental or other withdrawal-related analysis, or BLM or NASA representation, including BLM or NASA employees, or third-party contractors.
- E. *Documenting disagreement or inconsistency.* In the event NASA and the BLM disagree on significant elements of a site-specific environmental document or a Section 106 MOU (if required) such as designation of the alternatives to be analyzed or analysis of effects, and these disagreements cannot be resolved, the disagreements shall be discussed and documented. Pursuant to 43 CFR 2310.3-2(b)(3), NASA has designated the BLM as a cooperating agency. As such, the BLM may document its views and submit them as comments to the draft and or final environmental documents or the Section 106 MOU (if required), as appropriate.
- F. *Management of information.* The Parties acknowledge that all data and information provided will become part of NASA's and the BLM's official records and will be available for public review, except as restricted by applicable law. Each Party agrees that internal working drafts for the development of environmental documents or a Section 106 MOU (if required) will not be made available for review by individuals or entities other than the employees and contractors of the BLM or NASA, unless agreed to by both agencies. All draft documents are part of the official record and may only be released by the BLM or NASA to the extent allowed by applicable law. Each agency agrees to allow full discussion of preliminary analysis and recommendations; meetings to review such pre-decisional and deliberative documents will not be open to the public.

- G. *Conflict Resolution.* The Parties agree to make reasonable efforts to resolve procedural or substantive conflicts at the lowest level possible. To the extent procedural or substantive disagreements are unable to be resolved at the project team level, the matter may be elevated to subsequent levels of agency leadership as the Parties may agree to.
- H. *Coordination with contractors.* Each agency agrees to communicate between Parties through the BLM or NASA representative designated pursuant to Article VI of this MOU. The BLM will communicate through NASA's representative, provide information and comments directly, or collaborate with the technical staff on matters within the BLM's jurisdiction by law and/or special expertise.
- I. *Legal effect.* This MOU is intended solely for efficient management within the Executive Branch of the Federal Government. This MOU does not create any right or benefit, substantive or procedural, or trust responsibility, enforceable by law or equity, by persons who are not party to this agreement, against the BLM or NASA, their officers or employees, or any other person. This MOU does not direct or apply to any person outside of the BLM and NASA. Nothing in this MOU may be interpreted to cause either the BLM or NASA to take any action in violation of the Anti-Deficiency Act (31 USC 1341). Nothing in this MOU may be interpreted to be a regulation or to require the promulgation of a regulation by either the BLM or NASA. Each Party agrees to assume liability for its own risks arising from or related to activities conducted under this IAA.
- J. The schedule or milestone in this MOU is estimated based upon the Parties' current understanding of the projected availability of its respective goods, services, facilities, or equipment. In the event that either Party's projected availability changes, NASA, or BLM, respectively, shall be given reasonable notice of that change, so that the schedule and milestones may be adjusted accordingly. The Parties agree that NASA's and BLM's use of its own goods, services, facilities, or equipment shall have priority over the use planned in this IAA.
- K. NASA and BLM agree that the information and data exchanged in furtherance of the activities under this MOU will be exchanged without use and disclosure restrictions unless required by national security regulations (e.g., classified information) or as otherwise provided in this MOU or agreed to by NASA and BLM for specifically identified information or data (e.g., information or data specifically marked with a restrictive notice).
- L. NASA or BLM may, consistent with Federal law and this MOU, release general information regarding its own participation in this MOU as desired. Insofar as participation of the other Party in this MOU is included in a public release, NASA and BLM will seek to consult with each other prior to any such release, consistent with the Parties' respective policies.

Pursuant to Section 841(d) of the NASA Transition Authorization Act of 2017, Public Law 115-10 (the "NTAA"), NASA is obligated to publicly disclose copies of all agreements conducted pursuant to NASA's 51 U.S.C. § 20113(e) authority in a searchable format on the NASA website within 60 days after the agreement is signed by

the Parties. The Parties acknowledge that, if this MOU is entered into pursuant to NASA's 51 U.S.C. §20113(e) authority, this MOU will be disclosed, without redaction, in accordance with the NTAA.

VI. Agency Representatives

Each Party will designate a representative and alternate representative, as described in Attachment A, to ensure coordination between NASA and the BLM during the NEPA process and in preparation of other studies, analyses, reports, or other information necessary for Secretarial decision making as may be required. Each Party may change its representative by providing written notice to the other party.

VII. Administration of the MOU

- A. *Approval.* This MOU becomes effective upon signature by the authorized officials of both Parties.
- B. *Amendment.* This MOU may be amended through written agreement of both the Parties.
- C. *Termination.* This agreement will remain in effect unless it is amended, terminated, or upon such time as the Secretary of the Interior shall make a decision on NASA's application for land withdrawal. This agreement may be terminated by one agency giving 120 days written notice of the agency's intent to terminate to the other agency.
- D. *Entirety of Agreement.* This MOU may be supplemented by site-specific attachments that will be negotiated between the BLM and NASA (see e.g., Attachment B).

VIII. Signatures

The parties hereto have executed this MOU on the dates shown below:

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, by and through:




Karen St. Germain, Director Earth Science Division

2/25/22

Date

BUREAU OF LAND MANAGEMENT, by and through:



Douglas W. Furlado, District Manager, Battle
Mountain, Nevada

2/17/22

Date

Attachment A

BLM/Cooperating Agency (CA) participation in the NASA Application for Land Withdrawal and Reservation and associated NEPA process

	Requirements for NASA Application for Land Withdrawal and Reservation	Potential Activities of BLM/Cooperating Agency within their acknowledged jurisdiction by law and/or special expertise
1	Conduct scoping (not required for an EA) and identify issues	Provide input on coordination requirements based on CA goals; identify significant issues; identify relevant local and regional organizations and interest groups; provide non-financial sponsorship of public forums (with the BLM); collaborate in assessing scoping comments; identify connected, similar, and cumulative actions; identify other relevant agencies.
2	Develop project schedule	Consult on the development of the project schedule.
3	Develop purpose and need	Consult on the development of the purpose and need.
4	Collect inventory data	Identify data needs; provide data and technical analyses within the CA's expertise.
5	Formulate alternatives	Collaborate in developing alternatives.
6	Effects of alternatives	Provide effects analysis within the CA's jurisdiction by law and/or special expertise.
7	Select the preferred alternative; issue Draft NEPA document(s) - e.g., EA, draft FONSI, or NOI (if it is determined at the draft EA stage that preparation of an EIS is required)	Collaborate in evaluating alternatives and in developing criteria for selecting the preferred alternative; provide input on Preliminary Draft NEPA document. The BLM may provide written, public comments on draft if desired.
8	Respond to comments	As appropriate, review comments within the CA's jurisdiction by law and/or special expertise and assist in preparing responses.
9	Finalize NEPA document(s) - e.g., EA, FONSI	Following NASA completion of documentation to support withdrawal request in accordance with 43 CFR 2310.3-2 and other appropriate regulations, the BLM will review NASA's EA and FONSI for adoption.
10	Compiling of Case File	The BLM will consider NASA's response to draft Findings and Recommendations, including any request for an appeal, before providing to the Secretary of the Interior.
11	Publication of Federal Register	A Public Land Order will be considered by the Secretary of the Interior.

Agency Representatives

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION - Primary

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION - Alternate

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BUREAU OF LAND MANAGEMENT - Primary

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BUREAU OF LAND MANAGEMENT - Alternate

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Land Law Examiner/Nevada State Withdrawal Lead
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Attachment B

Timeline for NASA Application for Public Land Withdrawal

Task	Task Lead(s)	Dates
Publish Federal Register Notice of Application for Land Withdrawal; Two-year segregation period begins	BLM	April 29, 2021
90-day public comment period on proposed land withdrawal		April 29 - July 28, 2021
Hold public meeting on proposed land withdrawal	NASA, with BLM support	July 19, 2021
Review public and stakeholder comments	NASA and BLM	August 2021 – January 2022
Prepare draft Description of Proposed Action and Alternatives (DOPAA)	NASA	September 24 – November 5, 2021,
Finalize DOPAA	NASA, with BLM support	November 5, 2021
Prepare for and hold EA baseline meeting	NASA and BLM	November 5 - December 1, 2021
Prepare Draft Mineral Potential Report	NASA	December 2021 – March 2022
Prepare Internal Draft EA, Notice of Availability, and Consultation Letters	NASA	December 2021 – April 2022
NASA and BLM review of Draft Mineral Potential Report; consider comments and any proposed changes to Draft Mineral Potential Report	NASA and BLM	March 2022
Finalize Mineral Potential Report	NASA	April 2022
NASA and BLM review of Internal Draft EA, Notice of Availability, and Consultation Letters	NASA and BLM	April – May 2022
Prepare Public Draft EA, Notice of Availability, and Consultation Letters, incorporating feedback from NASA and BLM review of Draft EA	NASA	May – June 2022
Publish Notice of Availability and distribute Consultation Letters; 30-day public comment period for Public Draft EA		June – July 2022
Prepare Final EA and FONSI or NOI <ul style="list-style-type: none"> - Review public comments and any proposed changes to Public Draft EA - Ensure compliance with ESA and NHPA documented, as well as any appropriate G2G consultation 	NASA and BLM	July – August 2022
Finalize EA and FONSI or NOI	NASA	August 2022
Prepare EA Administrative Record	NASA	August – September 2022

BLM preparation of draft Case File with Findings and Recommendations	BLM	September – October 2022
NASA review of BLM draft Case File with Findings and Recommendations	NASA	October – November 2022
Finalize NASA response to BLM draft Case File, including any request for an appeal	NASA	November 2022
BLM preparation of Public Land Order package, if appropriate	BLM	November 2022 - January 2023
Review and approval of Public Land Order package, if appropriate	BLM & DOI	February - March 2023
Segregation period ends		April 29, 2023